

Exhibit 5

1
2 U.S. DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 ANDREW BOTTARI, -----X

5 PLAINTIFF(s),
6 -against-
7 Docket No: 07-cv-8192

8 DAVID FISCHER and MICHAEL STEPHENSON,
9 employees of the Village of Ardsley Police
10 Department,
11 -----X
12 DEFENDANT(s).
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DATE: January 7, 2008
TIME: 12:06 P.M.

EXAMINATION BEFORE TRIAL of the
Plaintiff, ANDREW BOTTARI, taken by the
Defendant, pursuant to a Court Order, held
at the offices of Hodges, Walsh & Slater,
L.L.P., 55 Church Street, Suite 211, White
Plains, New York 10601, before Marni
Galletta, a Notary Public of the State of
New York.

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2 A P P E A R A N C E S:

3
4 MATTHEW FLANN, ESQ.
5 Attorneys for Plaintiff(s)
6 ANDREW BOTTARI
7 26 Court Street, Suite 600
8 Brooklyn, New York 11242
9 By: MATTHEW FLANN, ESQ.

10 HODGES, WALSH & SLATER, L.L.P.
11 Attorneys for Defendant(s)
12 DAVID FISCHER and MICHAEL STEPHENSON,
13 EMPLOYEES OF THE VILLAGE OF ARDSELY
14 POLICE DEPARTMENT
15 55 Church Street, Suite 211
16 White Plains, New York 10601
17 By: JOHN J. WALSH, ESQ.
18 File #: 053121
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221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections in general. No objections
shall be made at a deposition except those
which, pursuant to subdivision (b) (c) or
(d) of Rule 3115 of the Civil Practice Law
and Rules, would be waived if not
interposed, and except in compliance with
subdivision (e) of such rule. All
objections made at a deposition shall be
noted by the officer before whom the
deposition is taken, and the answer shall
be given and the deposition shall proceed
subject to the objections and to the right
of a person to apply for appropriate relief
pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every
objection raised during a deposition shall
be stated succinctly and framed so as not
to suggest an answer to the deponent and,
at the request of the questioning attorney,
shall include a clear statement as to any
defect in form or other basis of error or
irregularity. Except to the extent
permitted by CPLR Rule 3115 or by this
rule, during the course of the examination
persons in attendance shall not make
statements or comments that interfere with
the questioning.

221.2 Refusal to answer when objection is
made. A deponent shall answer all
questions at a deposition, except (1) to
preserve a privilege or right of
confidentiality, (11) to enforce a
limitation set forth in an order of the
court, or (111) when the question is
plainly improper and would, if answered,
cause significant prejudice to any person.
An attorney shall not direct a deponent not
to answer except as provided in CPLR Rule
3115 or this subdivision. Any refusal to
answer or direction not to answer shall be
accompanied by a succinct and clear
statement of the basis therefor. If the
deponent does not answer a question, the
examining party shall have the right to
complete the remainder of the deposition.

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent
An attorney shall not interrupt the
deposition for the purpose of communicating
with the deponent unless all parties
consent or the communication is made for
the purpose of determining whether the
question should not be answered on the
grounds set forth in section 221.2 of these
rules and, in such event, the reason for
the communication shall be stated for the
record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED
that the transcript may be signed before
any Notary Public with the same force and
effect as if signed before a clerk or a
Judge of the court.

IT IS FURTHER STIPULATED AND AGREED
that the examination before trial may be
utilized for all purposes as provided by
the CPLR.

IT IS FURTHER STIPULATED AND AGREED
that all rights provided to all parties by
the CPLR cannot be deemed waived and the
appropriate sections of the CPLR shall be
controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED
by and between the attorneys for the
respective parties hereto that a copy of
this examination shall be furnished,
without charge, to the attorneys
representing the witness testifying herein.

1 BOTTARI
2 A N D R E W B O T T A R I, called as a
3 witness, having been first duly sworn by a
4 Notary Public of the State of New York, was
5 examined and testified as follows:
6 EXAMINATION BY
7 MR. WALSH:
8 Q. Please state your name for the
9 record.
10 A. Andrew Bottari.
11 Q. Where do you reside?
12 A. 10 Springwood Avenue, Ardsley,
13 New York 10502.
14 Q. Mr. Bottari, you are an
15 attorney, correct?
16 A. Yes.
17 Q. I think you know the drill. I
18 am going to be asking you some questions.
19 If you don't understand any of questions,
20 please let me know and I will attempt to
21 rephrase them so you do.
22 Do you understand that?
23 A. Yes.
24 Q. How long have you resided at 10
25 Springwood Avenue in Ardsley?

1 BOTTARI
2 A. About seven years.
3 Q. With whom do you presently
4 reside?
5 A. My wife and two children.
6 Q. Your wife's name?
7 A. Michelle.
8 Q. Does she use your last name?
9 A. She does.
10 Q. Your children's names and ages.
11 A. Olivia, nine-years-old and
12 Paul, eight-years-old.
13 Q. Where did you reside before you
14 moved to 10 Springwood Avenue in Ardsley?
15 A. 1501 Fox Glen Road.
16 Q. Was that also in Ardsley?
17 A. Hartsdale.
18 Q. Did you reside there with your
19 wife as well?
20 A. Yes.
21 Q. How long have you been married?
22 A. We were married in 1998.
23 Q. Are you presently employed,
24 sir?
25 A. Yes.

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1 BOTTARI
2 Q. In what role, what capacity?
3 A. As an attorney.
4 Q. Do you have your own firm?
5 A. I do.
6 Q. The name of that firm?
7 A. Bottari & Associates.
8 Q. Are there, in fact, associates?
9 A. No, not at the moment.
10 Q. Where is your office?
11 A. 445 Hampton Avenue, Suite 405.
12 Q. Here in White Plains?
13 A. Yes.
14 Q. How long have you been on
15 Hampton Avenue?
16 A. Approximately four years.
17 Q. What type of law do you
18 practice?
19 A. Criminal defense.
20 Q. How long have you been on your
21 own?
22 A. Four years.
23 Q. Were you working with a firm
24 prior to going out on your own?
25 A. No.

1 BOTTARI
2 Q. Who were you working with?
3 A. Kings County District
4 Attorney's office.
5 Q. How long were you with the
6 Brooklyn D.A.?
7 A. Five years.
8 Q. Where did you attend high
9 school?
10 A. Ardsley.
11 Q. When did you graduate?
12 A. 1984.
13 Q. You went to college?
14 A. Yes.
15 Q. What college?
16 A. I graduated from Vassar
17 College.
18 Q. When was that?
19 A. 1995.
20 Q. Where did you go to law school?
21 A. Brooklyn.
22 Q. When did you graduate from law
23 school?
24 A. '98.
25 Q. Did you go directly into the

9

1 BOTTARI
2 Kings County District Attorney's office?
3 A. Yes.
4 Q. What was the highest rank you
5 achieved at the Brooklyn DA's office?
6 A. There was no ranking, but I
7 became a felony assistant district
8 attorney.
9 Q. What were the circumstances
10 surrounding your leaving the Kings County
11 District Attorney's office?
12 A. I was ready to leave.
13 Q. Did you have an immediate
14 supervisor there?
15 A. Yes.
16 Q. Who was your last immediate
17 supervisor at the DA's office?
18 A. I don't recall. I could name a
19 few of my supervisors though, but not my
20 last one.
21 Q. Give me one or two.
22 A. Paul Burn, Shundia (phonetic)
23 Simpson.
24 Q. Can you spell Burn?
25 A. B-U-R-N.

10

1 BOTTARI
2 Q. And Shundia?
3 A. I don't know how to spell
4 Shundia, but I can spell her last name,
5 Simpson.
6 Q. Are they still with the DA's
7 office, do you know?
8 A. I think Paul is, but Shundia is
9 a judge now in New York County.
10 Q. Could I have your date of birth
11 please?
12 A. 7-26-66.
13 Q. Your Social Security number?
14 A. 119-58-4923.
15 Q. Have you ever been married
16 before prior to your marriage to your wife
17 Michaller?
18 A. No.
19 Q. Were you ever arrested on any
20 occasion prior to the March 3, 2005
21 incident with the Ardsley Police?
22 A. Yes.
23 Q. On how many occasions?
24 A. Once.
25 Q. Where was that?

11

1 BOTTARI
2 A. Poughkeepsie, New York.
3 Q. Was it within the City of
4 Poughkeepsie?
5 A. I don't know.
6 Q. You don't know?
7 A. It might be the town of
8 Poughkeepsie. I am not sure.
9 Q. What police department was
10 involved?
11 A. Poughkeepsie.
12 Q. You don't know if it was the
13 town or city?
14 A. No.
15 Q. What was the charge?
16 A. Driving while intoxicated.
17 Q. When was that?
18 A. 1993.
19 Q. Is that when you were in
20 college?
21 A. Yes.
22 Q. What was the outcome of that?
23 A. I got an infraction, driving
24 while ability impaired.
25 Q. Do you remember any of the

12

1 BOTTARI
2 police officers involved in that?
3 A. No.
4 Q. Was there a district attorney
5 involved in that?
6 A. Yes.
7 Q. Who was your attorney?
8 A. I don't remember his name.
9 Q. Were you actually taken to the
10 police station as a result of that arrest?
11 A. Yes.
12 Q. Were you handcuffed?
13 A. I don't remember.
14 Q. How long did you remain at the
15 police station following the arrest in
16 1993?
17 A. I don't remember.
18 Q. Were you placed in a cell?
19 A. I don't remember that either.
20 Q. As a result of the infraction,
21 I assume you paid a fine of some kind?
22 A. Yes.
23 Q. No jail time?
24 A. No.
25 Q. Approximately what time of day

13

1 BOTTARI

2 did the incident on March 3, 2005 take

3 place?

4 A. Repeat the question please.

5 Q. Approximately what time did the

6 incident involving the Ardsley police take

7 place?

8 A. I would say midnight.

9 Q. Was it --

10 A. Midnight to 12:15.

11 Q. So it was the early morning

12 hours of March 3rd?

13 A. Yes.

14 Q. Do you recall what day of the

15 week that was, March 3rd?

16 A. I believe it was Thursday.

17 Q. Had you worked the previous

18 day, the Wednesday?

19 A. I don't recall.

20 Q. Where did the incident with the

21 Ardsley police take place?

22 A. In Ardsley Village.

23 Q. Whereabouts?

24 A. In a parking lot.

25 Q. Is that a parking lot for a

14

1 BOTTARI

2 small shopping center?

3 A. Yes.

4 Q. How many stores in that

5 shopping center?

6 A. Approximately six.

7 Q. Is there a main anchor store in

8 that shopping center?

9 A. CVS.

10 Q. What time had you arrived in

11 that parking lot that evening?

12 A. Around 12.

13 Q. How long were you in the

14 parking lot before you realized that a

15 police officer was present?

16 A. Present in the parking lot?

17 Q. The first time you realized

18 there was a police officer coming to speak

19 to you.

20 A. Couple of minutes.

21 Q. Where had you been prior to

22 going to that parking lot?

23 A. Immediately prior?

24 Q. Yes.

25 A. I was at my house.

15

1 BOTTARI

2 Q. What had you been doing at your

3 house prior to leaving and going to the CVS

4 parking lot?

5 A. Watching TV.

6 Q. Were you watching TV with

7 anybody?

8 A. I don't recall.

9 Q. Was your wife home before you

10 left to go to the CVS parking lot?

11 A. Yes.

12 Q. Your children home?

13 A. Yes.

14 Q. What was your purpose for going

15 to the CVS parking lot?

16 A. No purpose.

17 Q. What time did you leave your

18 house?

19 A. Approximately 12.

20 Q. You drove directly to the

21 parking lot?

22 A. Drove down to the village and

23 then I decided to park in the parking lot.

24 Q. Did you drive through the

25 village?

16

1 BOTTARI

2 A. I don't remember.

3 Q. Did you see anybody that you

4 knew between the time you left your house

5 and the time you first spoke to a police

6 officer that night?

7 A. No.

8 Q. Had you had any arguments with

9 your wife that evening?

10 A. No.

11 Q. Did you have a cell phone with

12 you at the time you went to the parking

13 lot?

14 A. Yes.

15 Q. Had you received any phone

16 calls that evening before you left to go to

17 the parking lot?

18 A. Not that I recall.

19 Q. Had you ever gone to this

20 parking lot before?

21 A. Yes.

22 Q. At night?

23 A. Yes.

24 Q. Were any stores open when you

25 arrived?

17

1 BOTTARI

2 A. No.

3 Q. How far is it from your house?

4 A. Miles-wise or time-wise?

5 Q. Let's start with miles.

6 A. Approximately one mile.

7 Q. What road is the parking lot

8 on?

9 A. Saw Mill River Road.

10 Q. So if you were to drive

11 directly from your house to the parking

12 lot, what route would you take?

13 A. Springwood to Riverview to

14 Euclid to Ashford, Legion Drive, Center

15 Street, Ashford Avenue, but there might be

16 another route too. There are two different

17 routes I would take.

18 MR. FLAMM: Well, were you

19 describing the route that you took

20 that night or --

21 THE WITNESS: That's probably

22 the route that I took. They are

23 close to each other.

24 Q. There are other routes as well?

25 A. Yes.

18

1 BOTTARI

2 Q. How long would each route take

3 in time?

4 A. Both two to three minutes. At

5 that time, two to three minutes depending

6 on traffic. It might take longer.

7 Q. Not much traffic at midnight?

8 A. Not that night, no.

9 Q. Do you remember what the

10 weather was like that evening?

11 A. Cool.

12 Q. What were you wearing?

13 A. I was wearing slacks, a shirt

14 and a three-quarter length jacket.

15 Q. What type of jacket; a ski

16 jacket?

17 A. No.

18 Q. Wool jacket?

19 A. No. It is a business jacket.

20 It is a dress -- in between a dress and a

21 casual jacket.

22 Q. Do you still have it?

23 A. I do.

24 MR. WALSH: I ask that you

25 retain it until such time this matter

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1 BOTTARI

2 is concluded.

3 THE WITNESS: Yes.

4 MR. FLAMM: Let me answer.

5 So noted.

6 Q. What were you doing in the

7 parking lot from the time you first arrived

8 until the time a police officer came to the

9 parking lot?

10 A. I was in my car sitting in the

11 driver's side.

12 Q. Were you just sitting there or

13 were you doing anything else besides

14 sitting?

15 A. I was listening to music.

16 Q. Do you remember what you were

17 listening to?

18 A. Not the kind of music, no.

19 Q. Why did you go to the parking

20 lot to listen to music that night?

21 A. The car has a very good system

22 in it and I can't rightly play the stereo

23 system in my neighborhood because of my

24 neighbors and I parked in the parking lot

25 to listen to music because there is no

20

1 BOTTARI

2 neighbors around.

3 Q. On the day of this incident,

4 did you have a stereo at home?

5 A. Yes.

6 Q. Is there a reason why you

7 couldn't play music at your own home?

8 A. Well, I could have.

9 Q. Had you gone to this parking

10 lot and listened to music on occasions

11 prior to March 3, 2005?

12 A. Yes.

13 Q. How many times?

14 A. I don't recall.

15 Q. More than once?

16 A. Probably.

17 Q. More than five times?

18 A. I don't remember how many times

19 really. I have been living in the

20 neighborhood practically my entire life.

21 So, if you went back to when I am a child,

22 16-years-old, I don't know how many times.

23 Q. You had done this prior to

24 going to college as well, listening to

25 music in this parking lot?

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1 BOTTARI
2 A. And meet people, sure.
3 Q. Had you consumed any illegal
4 drugs that evening at all before the police
5 arrived?
6 A. No.
7 Q. Had you consumed any alcohol
8 that evening?
9 A. No.
10 Q. Were you on any medication at
11 the time?
12 A. No.
13 Q. Had you failed to take
14 medication that had been prescribed for you
15 that you should have taken?
16 A. No.
17 Q. What position was your vehicle
18 parked in relative to the CVS store?
19 A. It was perpendicular to CVS and
20 it was backed in.
21 Q. Is there a sidewalk in front of
22 that CVS store?
23 A. Yes.
24 Q. How close was the rear of your
25 car to that sidewalk at the time the police

1 BOTTARI
2 arrived?
3 A. I don't remember exactly. It
4 was in a parking spot though?
5 Q. You were in a marked parking
6 space?
7 A. Yes.
8 Q. Is there a lane for traffic to
9 pass between the CVS and the marked parking
10 space you were parked in or is the parking
11 directly up against the sidewalk?
12 A. The parking -- my vehicle is
13 next to the sidewalk. The sidewalk is next
14 to the buildings, CVS.
15 Q. Was your vehicle within one
16 foot of the sidewalk?
17 A. It was right next to the
18 sidewalk. I don't know exactly how far it
19 was from the sidewalk.
20 Q. Is there an entranceway to CVS
21 off that sidewalk?
22 A. Yes.
23 Q. How far was your car away from
24 the entranceway to CVS?
25 A. I don't remember.

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1 BOTTARI
2 Q. How did you first become aware
3 of a police officer being at that parking
4 lot?
5 A. I noticed him drive by.
6 Q. He passed the shopping center?
7 A. Yes.
8 Q. Did you see him come back?
9 A. Yes.
10 Q. Did you see his vehicle turn
11 into the shopping center?
12 A. Yes.
13 Q. How long after he drove by did
14 he return?
15 A. I'll say approximately one
16 minute, maybe less.
17 Q. At the time you saw the police
18 officer pull into that shopping center
19 parking lot, were there any doors open in
20 your vehicle?
21 A. I don't remember.
22 Q. Were you sitting in your
23 vehicle when the police officer returned to
24 the parking lot?
25 A. I think I was walking to the

1 BOTTARI
2 front of my vehicle, to the front door, the
3 front driver's side door.
4 Q. Where had you been immediately
5 before you started walking to the driver's
6 side door?
7 A. The rear of my vehicle.
8 Q. What were you doing at the rear
9 of your vehicle prior to walking to the
10 front door?
11 A. I was going to tidy up the back
12 of the car.
13 Q. What type of car was it?
14 A. An SUV.
15 Q. What make and model?
16 A. GMC Denali.
17 Q. Do you remember what year?
18 A. 2004.
19 Q. What type of stereo system did
20 it have?
21 A. A Bose.
22 Q. So to tidy up the back of the
23 car, was it necessary for you to open up
24 the hatchback in the back of the car?
25 A. No.

25

1 BOTTARI

2 Q. Was the hatchback open at the

3 time?

4 A. No.

5 Q. Was the hatchback open when the

6 police officer first drove by the shopping

7 center?

8 A. I don't remember, but at some

9 point it was open.

10 Q. At some point, did you then

11 close the hatchback?

12 A. Yes.

13 Q. How long before you saw the

14 police officer pull in the parking lot did

15 you close that hatchback?

16 MR. FLAMM: Objection.

17 You can answer.

18 A. I don't remember.

19 Q. Was is it open when the police

20 officer pulled in?

21 A. I don't think so. I am not

22 really sure because by the time he got -- I

23 was by the front door of my car and then he

24 pulled up.

25 Q. Did you actually tidy up the

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1 BOTTARI

2 rear of the vehicle at all?

3 A. No.

4 Q. How long were you out of the

5 vehicle before he pulled into the parking

6 lot, the police officer?

7 A. Maybe 30 seconds, a minute,

8 very brief period of time.

9 Q. Did you get out of the vehicle

10 before or after you saw the police officer

11 first drive by?

12 A. I don't remember.

13 Q. Was the hatchback open or

14 closed when the police officer first drove

15 by?

16 MR. FLAMM: I think it was

17 asked and answered.

18 You may answer it again.

19 MR. WALSH: Thank you.

20 A. I don't remember.

21 Q. Was the police officer in a

22 police cruiser, in a marked vehicle?

23 A. In a marked vehicle, yes.

24 Q. Was he wearing a uniform?

25 A. Yes.

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1 BOTTARI

2 Q. Do you know the name of the

3 first officer that arrived at the scene?

4 A. Police Officer Stephenson.

5 Q. Did you have a conversation

6 with Police Officer Stephenson when he

7 first arrived at the scene?

8 MR. FLAMM: Note my objection.

9 You can answer.

10 A. It was a conversation.

11 Q. The first conversation you had

12 with Police Officer Stephenson, was he in

13 his vehicle or outside of his vehicle?

14 A. He was inside his vehicle.

15 Q. When you first had a

16 conversation with Officer Stephenson, were

17 you inside your vehicle or outside your

18 vehicle?

19 A. I wouldn't characterize it as a

20 conversation.

21 Q. All right.

22 When the first words were

23 spoken by either you or Officer Stephenson

24 in the park lot that evening, were you

25 inside your vehicle or outside of your

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1 BOTTARI

2 vehicle?

3 A. I was outside of my vehicle.

4 Q. Who spoke first, you or Officer

5 Stephenson?

6 A. Officer Stephenson.

7 Q. What were the first words he

8 said to you?

9 A. He asked what I was doing

10 there.

11 Q. Did you respond?

12 A. Yes.

13 Q. What did you say?

14 A. I said, "I am not doing

15 anything."

16 Q. What did he say then?

17 A. He said, "what are you doing

18 here?" I responded, "I am not doing

19 anything. I am just here." Then he asked

20 again and I said, "I am listening to music.

21 "

22 Q. When he pulled in, did his

23 vehicle come behind your vehicle or to one

24 side or the other?

25 A. It was not behind my vehicle.

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BOTTARI

1
2 Q. Okay.
3 Was there anything between you
4 and his vehicle when the two of you first
5 spoke?
6 A. What do you mean?
7 Q. Well, was his car on the other
8 side of your vehicle or on the same side
9 you were on?
10 A. His vehicle was on the same
11 side as I was on.
12 Q. Which was the driver's side?
13 A. Correct.
14 Q. How far from your vehicle was
15 his vehicle stopped when the two of you
16 first spoke?
17 A. Maybe four steps, five steps.
18 Q. Did there come a time when
19 Officer Stephenson got out of his vehicle?
20 A. Yes, he did get out of his
21 vehicle.
22 Q. How long after the first
23 conversation did he get out of his vehicle?
24 A. I don't remember how long.
25 Q. Did you see him use his radio

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BOTTARI

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2 at all prior to him getting out of his
3 vehicle?
4 A. Yes.
5 Q. Did you overhear what he said
6 when he used his radio?
7 A. No.
8 Q. Did you get back in your
9 vehicle before Officer Stephenson got out
10 of his?
11 A. No.
12 Q. Did you at any time get back in
13 your vehicle that evening before being
14 taken away?
15 A. No.
16 Q. Was there any further
17 conversation between you and Officer
18 Stephenson while he was still in his
19 vehicle after you told him you were
20 listening to music?
21 A. Yes.
22 Q. What else was said while he was
23 still in his vehicle?
24 A. I said, "I am going to go home.
25 I am going to leave."

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BOTTARI

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2 Q. And did he respond?
3 A. Yes.
4 Q. What did he say?
5 A. He said, "no, you are not."
6 Q. Was there any further
7 conversation before he got out of his
8 vehicle?
9 A. Yes.
10 Q. What else was said before he
11 got out of his vehicle?
12 A. I said, "what are you doing?"
13 Q. Did he respond?
14 A. No. He just pulled his car up
15 in front of my car blocking my vehicle in.
16 Q. Did he put his car in reverse
17 to do that?
18 A. I don't think so. He pulled it
19 forward.
20 Q. How would you characterize the
21 tone of voice Officer Stephenson used
22 during the conversation you had with him
23 while he was still in his car?
24 A. Interrogative.
25 Q. How about the tone of voice

32

BOTTARI

1
2 that you used; what type of tone of voice
3 did you use in response to his questions?
4 A. Monotone, the way I am speaking
5 to you now.
6 Q. After he pulled his vehicle in
7 behind yours, did Officer Stephenson get
8 out of his vehicle?
9 A. He did.
10 Q. Did there come a time when
11 another police officer arrived?
12 A. Yes.
13 Q. About how long after Officer
14 Stephenson got there did the second officer
15 arrive?
16 A. Approximately one to two
17 minutes.
18 Q. Had Officer Stephenson moved
19 his vehicle to block yours in prior to the
20 arrival of the other officer?
21 A. Yes.
22 Q. Do you know the name of the
23 other officer?
24 A. Yes.
25 Q. What is his name?

33

1 BOTTARI
2 A. Sergeant Fischer.
3 Q. Had Officer Stephenson gotten
4 out of his vehicle before the arrival of
5 Sergeant Fischer?
6 A. Yes.
7 Q. Where were you in relation to
8 your driver's side door when Sergeant
9 Fischer arrived?
10 A. I was -- I don't remember
11 exactly.
12 Q. Were you still within five feet
13 of your vehicle?
14 A. Yes.
15 Q. When Stephenson first arrived,
16 was your driver's side door open?
17 A. I don't remember.
18 Q. How about when Fischer first
19 arrived, was your driver's side door open?
20 A. I don't recall.
21 Q. At any time that evening, did
22 you reopen the driver's door?
23 A. I did.
24 Q. Do you recall whether that was
25 before or after either of the police

34

1 BOTTARI
2 officers arrived?
3 A. It was when I said, "I am going
4 to get back in my car and leave." I went
5 to open my door and he pulled up in front
6 of my door. I don't recall if I shut the
7 door or not after that.
8 Q. So it was after you opened your
9 door that Officer Stephenson moved his
10 vehicle behind yours?
11 A. Say that again.
12 Q. What is the sequence of events
13 regarding you opening the door and him
14 moving his vehicle? Did you open the door
15 before he moved his vehicle or at the same
16 time or after he moved his vehicle?
17 A. I said that I was going home
18 or, "I am leaving" and I went to open --
19 and he said, "no, you are not" and
20 somewhere in there, I opened the door and
21 then he pulled his car in front of my
22 vehicle.
23 Q. Was there any conversation
24 between you and Officer Stephenson after he
25 got out of his vehicle and before Sergeant

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35

1 BOTTARI
2 Fischer arrived?
3 A. I don't remember.
4 Q. Where in relation to your
5 vehicle did Officer Fischer pull his
6 vehicle to a stop?
7 A. His vehicle was north and west
8 of my vehicle.
9 Q. If you were sitting in your
10 driver's side behind the steering wheel,
11 would his vehicle have been to the left, to
12 the right, straight ahead?
13 A. To the right.
14 Q. And how far away from your
15 vehicle?
16 A. Maybe 10 steps.
17 Q. Where were you when Officer
18 Fischer first arrived, Sergeant Fischer?
19 A. Next to my vehicle.
20 Q. Still near the driver's side
21 door?
22 A. Same area, yeah.
23 Q. Where was Officer Stephenson
24 when Sergeant Fischer first arrived?
25 A. Near his vehicle.

36

1 BOTTARI
2 Q. Did you have a conversation
3 with Sergeant Fischer that evening?
4 A. No.
5 Q. No conversations at all with
6 the sergeant?
7 A. No.
8 MR. FLAMM: Note my objection
9 to the use of the word conversation.
10 Q. Did Sergeant Fischer ask you
11 any questions at the scene that night?
12 A. No.
13 Q. Did you say anything directly
14 to Sergeant Fischer that evening?
15 A. No.
16 Q. After Sergeant Fischer first
17 arrived, what happened next?
18 A. I observed Officer Stephenson
19 and Sergeant Fischer come close to each
20 other.
21 Q. Did they appear as though they
22 were conversing?
23 A. Yes.
24 Q. Did you overhear anything that
25 was being said between the two of them

37

38

BOTTARI

BOTTARI

1 immediately after Sergeant Fischer arrived?

3 A. No.

4 Q. For how long did they speak?

5 A. Briefly.

6 Q. After they stopped their
7 conversation between each other, what
8 happened?

9 A. They formed -- they separated.

10 Q. Where did they go in relation
11 to where you were standing?

12 A. They formed -- this is how I
13 could describe it. They sort of formed a V
14 or a triangle.

15 Q. With you at the apex of the V?

16 A. What's that?

17 Q. With you at the point of the V?

18 A. Yes.

19 Q. So one was somewhat to your
20 left and one was somewhat to your right?

21 A. Correct.

22 Q. Which one was to your left?

23 A. To my left was Officer
24 Stephenson.

25 Q. Sergeant Fischer then would

1 have been somewhat to your right?

3 A. Yes.

4 Q. How close were you to the front
5 of your car at that point?

6 A. I was in the same area that I
7 was all along.

8 Q. You were still back by the
9 driver door?

10 A. Yes.

11 Q. Which way were you facing in
12 relation to your car, towards your car,
13 away from your car, towards the front of
14 the car, towards the back?

15 A. I was facing towards Saw Mill
16 River Road.

17 Q. Which way is that in relation
18 to the way your vehicle was parked?

19 A. The nose of my vehicle was
20 pointed towards Saw Mill River Road. I was
21 also pointed towards Saw Mill River Road.

22 Q. So your vehicle was immediately
23 to your right?

24 A. Correct.

25 Q. You were still at about the

39

40

BOTTARI

BOTTARI

1 driver's door?

3 A. Yes.

4 Q. If you reached out, would you
5 have been able to touch the driver's door
6 when they formed this V?

7 A. I don't recall.

8 Q. Was any portion of your vehicle
9 between you and Sergeant Fischer when they
10 formed this V?

11 Off the record.

12 (Whereupon, an off-the-record
13 discussion was held.)

14 A. He had a direct line to me and
15 so did Officer Stephenson.

16 Q. How tall are you?

17 A. Five-eight.

18 Q. What was your weight at the
19 time?

20 A. It was 195.

21 Q. In relation to you, how big was
22 Sergeant Fischer?

23 A. Sergeant Fischer is over six
24 feet.

25 Q. How about Officer Stephenson,

1 how big is he?

3 A. Under six feet, maybe
4 five-eleven.

5 Q. As they stood one to your left
6 and one to your right, did either one of
7 them say anything to you?

8 A. Yes.

9 Q. Which one spoke?

10 A. Officer Stephenson.

11 Q. What did Officer Stephenson
12 say?

13 A. He said, "get your hands out of
14 your pockets."

15 Q. What did you say?

16 A. I asked him why.

17 Q. What did he say?

18 A. He responded, "for safety
19 reasons."

20 Q. Did you then take your hands
21 out of your pockets?

22 A. Not immediately.

23 Q. Did you say anything else to
24 Officer Stephenson after he said, "for
25 safety reasons?"

41

1

BOTTARI

2

A. Yes.

3

Q. What did you say?

4

A. I said, "I have my phone in one

5

pocket and my wallet in the other."

6

Q. Why did you tell him that?

7

A. Because I wanted them to know I

8

had something I was going to pull out of my

9

pockets.

10

Q. Did they ask you to take

11

anything out of your pockets?

12

A. No.

13

Q. Why were you going to take

14

these things out of your pockets?

15

A. I just did. I just said that.

16

I was pulling my hands out of my pockets

17

and I had stuff in it and I wanted them to

18

know this is what I had.

19

Q. Did you have anything else in

20

your pockets besides your phone and your

21

wallet?

22

A. No.

23

Q. Did you have a business card

24

case at the time?

25

A. I don't recall. But I can tell

42

1

BOTTARI

2

you this, I don't use a business card case.

3

Q. Did you own one at the time?

4

A. I might have.

5

Q. Was it metallic?

6

A. Yes.

7

Q. Do you recall whether or not

8

you had that with you on this particular

9

evening?

10

A. No.

11

Q. You don't remember?

12

A. I don't recall having it that

13

evening.

14

Q. How long did you keep your

15

hands out of your pockets for when you took

16

your wallet and your cell phone out of your

17

pockets?

18

A. Until they grabbed me.

19

Q. At any time did you return your

20

hands to your pockets before they grabbed

21

you?

22

A. No.

23

Q. How long after you took your

24

wallet and cell phone out of your pockets

25

did they grab you?

43

1

BOTTARI

2

A. Very briefly. I would say

3

approximately five to -- about five

4

seconds.

5

Q. Could it have been less than

6

five seconds?

7

A. It's possible.

8

Q. Where were your hands when they

9

grabbed you?

10

A. My hands were near my

11

shoulders.

12

Q. Were they being held straight

13

out in front of you or were your elbows

14

bent?

15

A. My elbows were bent

16

(indicating).

17

MR. FLANN: Were they like this

18

(indicating)?

19

THE WITNESS: Exactly.

20

Q. Were you holding the wallet and

21

cell phone up in your hands?

22

A. Yes.

23

THE WITNESS: I am going to get

24

some water.

25

(Whereupon, a short recess was

44

1

BOTTARI

2

taken.)

3

Q. From the time you removed your

4

hands from your pockets until the time you

5

were grabbed by the officers, did either of

6

them say anything else?

7

A. I don't remember.

8

Q. How about you; after you took

9

your hands out of your pockets and before

10

you were grabbed, did you say anything?

11

A. Yes.

12

Q. What did you say?

13

A. "What are you doing?"

14

Q. There was no response from them

15

prior to them grabbing hold of you?

16

A. No.

17

Q. Did both Officer Stephenson and

18

Sergeant Fischer take hold of you?

19

A. Yes.

20

Q. What portion of your body did

21

Officer Stephenson take hold of?

22

A. My left arm, left shoulder.

23

Q. With both of his hands?

24

A. Yes.

25

Q. What part of your body did

45

1 BOTTARI

2 Sergeant Fischer take hold of?

3 A. My right arm.

4 Q. Did you resist after they took

5 hold of you?

6 MR. FLANN: Objection.

7 You can answer.

8 A. No.

9 Q. Did you pull your arms away

10 from the officers?

11 A. No.

12 Q. Did the three of you fall to

13 the ground?

14 A. No.

15 Q. Did any of you fall to the

16 ground?

17 A. No.

18 Q. Did there come a time when you

19 ended up own the ground?

20 A. Yes.

21 Q. How long after they took hold

22 of your arms did you end up on the ground?

23 A. A second or two.

24 Q. Did either Sergeant Fischer or

25 Officer Stephenson also end up on the

46

1 BOTTARI

2 ground?

3 A. Parts of their body were on the

4 ground.

5 Q. What portion of your body hit

6 the ground first?

7 A. The front portion.

8 Q. By that, you mean your chest or

9 your stomach, or your knees or your face or

10 all of the body?

11 A. I was pretty much slammed to

12 the ground. I don't recall which body

13 parts hit the ground first.

14 Q. What portion of either of the

15 police officers hit the ground?

16 A. I know that parts of their body

17 was on top of me, but not their entire

18 body, so I don't recall what parts of their

19 body. I was face first on the ground, so I

20 don't recall what parts of their body were

21 on me.

22 Q. Was it some parts of their body

23 other than their hands?

24 A. Yes.

25 Q. Some part of the front of their

47

1 BOTTARI

2 body other than their hands; chest,

3 stomach?

4 A. I don't recall.

5 Q. Were both officers on top of

6 you after you were on the ground or just

7 one?

8 A. Both.

9 Q. Did either of them respond to

10 you when you asked them what they were

11 doing immediately taking hold of your arms?

12 MR. FLANN: Asked and answered.

13 You can answer it again.

14 A. No.

15 Q. How long did you remain on the

16 ground for?

17 A. Five maybe ten minutes.

18 Q. While you were on the ground,

19 did you feel pain in any part of your body?

20 A. Yes.

21 Q. What parts of your body?

22 A. My knee, shoulder, my -- above

23 my left eye, my side.

24 Q. Anything else?

25 A. I don't think so.

48

1 BOTTARI

2 Q. Which knee were you feeling

3 pain in while you were on the ground?

4 A. I don't remember at this point.

5 Q. How about the shoulder, which

6 shoulder was hurting?

7 A. I don't remember.

8 Q. Was it the left side that hurt?

9 A. I don't remember.

10 Q. Were you bleeding from any part

11 of your body while you were on the ground?

12 A. Yes.

13 Q. Where were you bleeding from

14 while you were on the ground?

15 A. Above my left eye.

16 Q. While you were on the ground,

17 did they handcuff you?

18 A. Yes.

19 Q. Hands behind your back?

20 A. Yes.

21 Q. Do you know which officer

22 handcuffed you?

23 A. Stephenson.

24 Q. During the time that you were

25 lying on the ground, did you overhear any

1 BOTTARI
2 conversation between the two officers?
3 A. No.
4 Q. Did you have any conversation
5 with either of the two officers while you
6 were on the ground?
7 A. No conversation.
8 Q. Did you say anything while you
9 were lying on the ground?
10 A. Yes.
11 Q. What did you first say while
12 you were on the ground?
13 A. Repeat the question please.
14 Q. What were the first words you
15 uttered after you came to the ground?
16 A. "You can have my arm. You
17 don't need to twist it. I am not
18 resisting."
19 Q. Did that elicit a response from
20 either of the officers?
21 A. Verbal response, no.
22 Q. Any other type of response?
23 A. I know I got hit in the back of
24 my head and neck.
25 Q. Was that -- how long --

1 BOTTARI
2 A. I don't know if that was a
3 response or just their standard practice.
4 Q. How long after you went to the
5 ground did you feel a blow to your head?
6 A. It was quick. I have to say
7 seconds.
8 Q. Was it before or after you said
9 you can have my arm?
10 A. After.
11 Q. Was it before or after the
12 handcuffs were applied?
13 A. That, I don't recall.
14 Q. Did you say anything else while
15 you were on the ground?
16 A. Yes.
17 Q. What else did you say while you
18 were on the ground?
19 A. I said, in essence, "you guys
20 really fucked up. My face is bleeding. I
21 am cut." I expressed disbelief. "I can't
22 believe you guys did this."
23 Q. At any time prior to them
24 grabbing your arms, did you advise them you
25 were a former prosecutor?

1 BOTTARI
2 A. Yes.
3 Q. How long before they grabbed
4 your arms did you advise them you were a
5 prosecutor?
6 A. I'm sorry. I didn't inform
7 them before they grabbed my arms.
8 Q. Did you tell them you were an
9 attorney before they grabbed your attorney?
10 A. No.
11 Q. At what point did you first
12 advise them that you were an attorney?
13 A. As they were grabbing my arms
14 and throwing me to the ground.
15 Q. What did you say?
16 A. I said, "wait a second. I am a
17 former prosecutor. I am an attorney."
18 Q. Did they respond at all to that
19 statement?
20 A. No.
21 Q. At any time did you tell them
22 you were refusing to remove your hands from
23 your pockets?
24 A. No.
25 Q. Did you at any time tell them

1 BOTTARI
2 you were leaving despite the fact that they
3 asked you to stay?
4 A. No.
5 Q. Did you hear either of them say
6 anything during the time that you were on
7 the ground?
8 A. After I was handcuffed, they
9 called for an ambulance. I don't recall
10 who.
11 Q. Did they say anything to you
12 while you were on the ground?
13 A. No.
14 Q. Did you get up off the ground
15 before they called the ambulance?
16 A. No.
17 Q. Did you hear what they said
18 when they called the ambulance?
19 A. I did.
20 Q. What did the officer who called
21 the ambulance say?
22 A. I don't remember.
23 Q. Did either of the officers
24 render you any first aid at the scene?
25 A. No.

